

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

PEDRO LOPEZ ALVAREZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74506

Agency No. A96-067-329

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Pedro Lopez Alvarez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") denial of his motion to reopen his application for cancellation of removal. To the extent we have jurisdiction, it is

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

conferred by 8 U.S.C. § 1252. “We review the denial of a motion to reopen for abuse of discretion.” *de Martinez v. Ashcroft*, 374 F.3d 759, 761 (9th Cir. 2004).

We deny in part and dismiss in part the petition for review.

The BIA may deny a motion to reopen if the alien is not *prima facie* eligible for the relief sought. *See INS v. Abudu*, 485 U.S. 94, 104 (1988). Alvarez’s failure to voluntarily depart within the specified period rendered him ineligible for the relief he sought. *See* 8 U.S.C. § 1229c(d); *de Martinez*, 374 F.3d at 762-64. The BIA therefore did not abuse its discretion in denying his motion to reopen.

To the extent that Alvarez raises equal protection and due process contentions, we lack jurisdiction to address those issues. Those issues were raised, and rejected, in an earlier appeal to the BIA. Alvarez, however, did not file a petition for review from that order, and did not, and could not, raise those issues in his motion to reopen. *See* 8 C.F.R. § 1003.2(c)(1); *Membreno v. Gonzales*, 425 F.3d 1227, 1229-30 (9th Cir. 2005) (en banc).

PETITION FOR REVIEW DENIED in part and DISMISSED in part .